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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,423	01/27/2004	Brian David Hofrichter	9150	1531

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EXAMINER

DOUYON, LORNA M

ART UNIT PAPER NUMBER

1751

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/765,423	Applicant(s) HOFRICHTER ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4 pages</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation “said personal cleansing compositions” in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Could it be that this claim depends from claim 1? (For purposes of prior art rejection, claim 20 is presumed to be dependent from claim 1.)

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 9, 11-14, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura et al. (US Patent No. 5,853,711), hereinafter “Nakamura”.

Nakamura teaches a water-in-oil emulsion cosmetic composition comprising a mixed powder of (A) an organopolysiloxane elastomer spherical powder having an average particle size of 2.0 to 5.0 μm and a particle size distribution of 1 to 15 μm and (B) a hydrophobic silica powder having an average particle size of not more than 0.2 μm , wherein the weight ratio of (A) to (B) is 1:0.1 to 1:5, (C) an oil phase, (D) an emulsifying agent having an HLB value of not more than 7, and (E) water, and, optionally, (F) a metallic soap or (G) an organically modified

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clay mineral (see abstract). In Example III-1, Nakamura teaches a water-in-oil emulsion comprising 5.0 wt% squalene (which is also a conditioning agent), 5.0 wt% isopropyl myristate, 5.0 wt% cetyl-2-ethylhexanoate (both of which are also emulsifying agents which are also surfactants), 3.0 wt% organopolysiloxane elastomer spherical powder, 1.0 wt% dimethylsilylated silica powder (which inherently have irregular shape) and the balance purified water (see col. 13, lines 28-56). The emulsion has an extremely good spreadability on skin and the emulsion particles have an average particle size of 1-5 μm and a particle size distribution of 0.1-15 μm (see col. 14, lines 20-30). Even though Nakamura does not explicitly disclose a coefficient of friction of hair as those recited in claims 18-19, that is, after treatment with the cosmetic composition, it would be inherent in the cosmetic composition of Nakamura to exhibit the same property because same ingredients with overlapping proportions have been utilized. Hence, Nakamura; anticipates the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (US Patent No. 5,534,265), hereinafter "Fowler".

Fowler teaches a non-abrasive personal cleansing aqueous gel composition comprising (a) from about 0.1% to about 20% of insoluble particles having a mean particle size diameter

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from about 1 micron to about 75 microns, with greater than about 95% of said particles in said composition having a diameter less than about 75 microns, (b) from about 0.05% to about 10% of a water soluble or dispersible gelling agent, and (c) from about 20% to about 99.85% water (see col. 2, lines 27-36). Particles having a wide range of shape, surface characteristics, and hardness characteristics can be utilized herein provided the particle size requirements are met (see col. 4, lines 15-17). The composition also comprises from about 0.05% to about 40% of a surfactant, from about 0.1% to about 50% of an emollient (see claim 1), and from about 0.1% to about 10% of a skin conditioner (see claim 3). The gelling agent also include cationic polymers (see col. 8, line 8 to col. 9, line 11). Other gelling agents include polysaccharides such as hydroxypropylcellulose (see col. 9, lines 40-67). Fowler also teaches a method of cleansing skin which comprises applying to the skin from about 0.5 mg/cm² to about 25 mg/cm² of the above composition (see claim 4). Suitable insoluble particles include polyethylene, nylon and silica (see col. 4, lines 18-37). Fowler, however, fails to specifically disclose (1) a composition comprising irregularly shaped and spherical particles having a weight ratio and median sizes as those recited, (2) charge density and molecular weight of the cationic polymer, (3), the coefficient of friction of hair as those recited in claims 18-19, that is, after treatment with the cosmetic composition.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made have prepared a personal cleansing composition comprising a mixture of irregularly shaped particles and spherical particles in their optimum proportions because Fowler teaches that particles having a wide range of shape can be utilized, hence, the selection of irregular shape and spherical shape would have been obvious to one of ordinary skill in the art.

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With respect to difference (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the charge density and molecular weight of the cationic polymer to be within those recited because similar cationic polymers have been utilized.

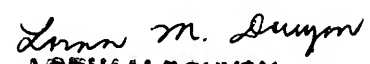
With respect to difference (3), it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the coefficient of friction of hair as those recited in claims 18-19, that is, after treatment with the cosmetic composition, to be within those recited because similar ingredients with overlapping proportions have been utilized.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LORNA M. DOUYON
PRIMARY EXAMINER